Case: 1:17-md-02804-DAP Doc #: 3496-3 Filed: 09/21/20 1 of 5. PageID #: 502437

EXHIBIT 2

	Page 1		
1	IN THE UNITED STATES DISTRICT COURT		
2	NORTHERN DISTRICT OF OHIO		
3	EASTERN DIVISION		
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7	IN RE: NATIONAL PRESCRIPTION OPIATE LITIGATION VS.		
8	Case No: 1:17-md-2804-DAP		
9			
LO	This document relates to:		
L1	All cases		
L2			
L3	AUDIO TRANSCRIPTION		
L4	4/30/2019 Discovery Telephonic Conference		
L5			
L6	Transcribed May 1, 2019		
L7			
L8			
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1 the filing of motions with 14-day or 30-day responses 2 SPECIAL MASTER DAVID COHEN: Good morning, 3 everybody. This is David Cohen. 4 UNKNOWN MALE: Good morning. 5 DONNA WELCH: Good morning, David. 6 UNKNOWN MALE: Morning. 7 SPECIAL MASTER DAVID COHEN: All right. So, 8 we'll start with the usual reminders that if you're 9 not speaking, please put yourself on mute. I do hear 10 some folks typing in the background and that will help 11 keep this orderly. And, also, because this is being 12 recorded and will be transcribed, please, every time 13 you say something, say who you are as well. So, thank 14 you all for making yourself available. 15 I thought that a telecon was probably going 16 to be easier for everybody to avoid travel time. I	Page 2	Page 4
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177 1 1 4 66 11 1 1 1 1 1 1 1 1 1 1 1 1 1 1	16 to be easier for everybody to avoid travel time. I	
	17 know a lot of folks are involved with expert	17 So, that if there is information that defendants want
18 depositions and also the number of topics we have to 18 that is not listed in the subpoena, well, that's a	18 depositions and also the number of topics we have to	_
19 talk about is actually not very long, compared to some 19 problem. But, as to the information that has been	19 talk about is actually not very long, compared to some	19 problem. But, as to the information that has been
20 other agenda lists that we have gone through. 20 listed in the subpoena that you all have been talking	20 other agenda lists that we have gone through.	20 listed in the subpoena that you all have been talking
21 And I think that I want to start with the 21 about now for several months, that's fair game. So,	21 And I think that I want to start with the	21 about now for several months, that's fair game. So,
22 United Health issue that is agenda item no. 202 22 that's my observation with regard to the procedural	22 United Health issue that is agenda item no. 202	22 that's my observation with regard to the procedural
23 because outside counsel, who is involved with United 23 aspect.	23 because outside counsel, who is involved with United	23 aspect.
24 Healthcare, is involved with that issue only and so we 24 With regard to the substantive aspect, the	24 Healthcare, is involved with that issue only and so we	24 With regard to the substantive aspect, the
25 can address that and then they can get off the telecon 25 essence of what's going on here, of course, is that	25 can address that and then they can get off the telecon	25 essence of what's going on here, of course, is that

2 (Pages 2 - 5)

Page 26 Page 28 1 less in the order that they are listed. 1 UNKNOWN MALE: We will do that and --The first one is 189. This is something that 2 SHANNON MCCLURE: Special Master Cohen? 3 I ruled on (inaudible) data when we were together last 3 UNKNOWN MALE: -- I haven't even seen this 4 and I thought that the issue that was ripe at the time 4 letter from this morning. I apologize. I was in a --5 was a question of whether Cuyahoga and Summit County 5 doing some other matters, so I didn't even know this 6 were going to -- maybe it was only Cuyahoga, I don't 6 issue was -- this was an issue. So, we need to meet 7 remember -- produce case files on a rolling basis or 7 and confer because I think it's quite overstated, but 8 wait until they had collected them all, redacted them, 8 we'll discuss it with them. 9 and then produce them. And I ordered that it be done SHANNON MCCLURE: Special Master Cohen, we're 10 in a rolling basis. So, I thought that that was all 10 happy to get on the phone at the plaintiff's 11 we needed to address. 11 convenience. This is Shannon McClure on behalf of 12 I know a letter recently --12 AmerisourceBergen so that we can get usable documents. 13 UNKNOWN MALE: And on that telecon we did 13 Thank you. 14 that. We started. 14 SPECIAL MASTER DAVID COHEN: Thank you. All 15 SPECIAL MASTER DAVID COHEN: Right. 15 right. So, now, I'm going to just go through -- I 16 DONNA WELCH: Yes, Your Honor. 16 think there are only, I don't know, half a dozen or so 17 SPECIAL MASTER DAVID COHEN: Yes. I 17 other agenda items that I either need a status report 18 understand that you did start doing that and the 18 for or we tabled the last time we were together and I 19 issue, though, is that now that defendants have 19 promised I would take up again. If, at the end of 20 started to receive that rollout process, that a letter 20 that, there are any agenda items that I skipped over 21 that I skimmed this morning suggested that the 21 that the parties want to raise, they are free to do 22 redactions are excessive to the point that the data --22 that. 23 excuse me -- that the documents are unusable and, 23 Okay. The next agenda item no. 191 is the 24 also, that they are coming out in a fashion that is 24 motion to compel from (inaudible) audit reports. I 25 not organized, making them even more unusable. 25 did some instructions last week that the parties had Page 27 Page 29 1 I'm not going to get in the middle of that,

3 and fix that. It cannot be the case that these 4 redactions are coming out in a way that leaves the 5 documents deidentified to the extent that there is no 6 way to use them. And it cannot be the case that the 7 documents are coming out in a way that is so haphazard 8 that it's impossible to understand how to organize and 9 which files they go with. 10 I mean, I ultimately ruled largely in 11 Cuyahoga County and Summit County's favor by saying 12 that only 10 case-file documents had to be produced. 13 It could have been 100. It could have been 25. It 14 was whittled all the way down to 10 and the Court 15 affirmed that. But my expectation is that the 16 documents that are going to be produced in connection 17 with those 10 files need to be produced in a usable 18 manner.

And it seems like initial returns in the

20 election are showing that that's not happening. So,

21 I'm not going to hear arguments on it. I am just

24 to work so that the defendants can use these

22 directing the parties to get on the phone with each

23 other and come to an understanding of how this needs

2 except to say that you all need to get on the phone

1 to identify any -- first of all, identify whether they 2 were withholding any (inaudible) audit reports. 3 Second of all, if they were, make sure that they were 4 listed on a privilege log. Third of all, as to those 5 that are on a privilege log, submit them to me. And, 6 fourth, also submit, although it didn't have to be at 7 the same time, a letter giving context and explanation 8 as to why those audits have been withheld. I've seen the parties largely adhere to those 10 instructions. So, I have seen folks send out simple 11 emails saying, we are not withholding any (inaudible) 12 audits. I've seen some folks say, we are withholding 13 some (inaudible) audits and they're on privilege logs 14 and here they are for your review. And here is a 15 letter explaining them or you will be getting a letter 16 explaining them. And I have seen a couple parties say

17 something less than that. For example, we are 18 withholding (inaudible) audits. They are on a

20 camera review, no explanation.

19 privilege log, period. No production to me for in-

22 their obligations are. It seems like the process is

25 (inaudible) audits and is withholding (inaudible)

24 any defendant that has not produced all of its

23 working as I instructed with most folks. But as to

And, so, I'm just reminding everybody of what

21

25 documents.

19

Page 30 Page 32 1 audits, I remind you that, A, it needs to be on a 1 the agenda items for future agendas for each such 2 privilege log. B, it needs to be produced to me for 2 defendant. So, we're not going to have an agenda item 3 in-camera review. C, needs to come with a letter 3 like this one, which simply says, (inaudible) audits, 4 giving me context and explaining the basis for 4 because it will kind of be a mess with given how many 5 withholding it. 5 defendants we are. So, 191 will essentially turn into Having said that, I think that addresses this 6 a number of new items, each defendant specific. 7 as fully as it needs to be addressed at this juncture. DAN GATZ: Special Master Cohen, this is Dan 8 Does anybody have anything to add? 8 Gatz. Will the plaintiffs give a copy of that letter UNKNOWN MALE: Special Master Cohen --9 9 that is submitted to you? 10 PETE WEINBERGER: Special Master Cohen, this 10 SPECIAL MASTER DAVID COHEN: Well, I assume 11 is Pete Weinberger. You have accurately described 11 that much of that letter would include information 12 what the responses -- the breadth or the scope of the 12 that itself would be privileged. In other words, I am 13 responses. I just have a request. I realize that I 13 not going to get a full explanation of why something 14 have sort of been the clearing house for this on 14 is being withheld unless they can submit the 15 behalf of the PEC and I would simply ask that when the 15 explanation in-camera to me as well. So, I think the 16 defendants respond on this issue, that they respond to 16 answer is no, at least at first. I guess the 17 our LISTSERV, as well as to the -- and in some 17 defendants should kind of think about that. 18 instances to other people -- but please do not respond 18 I guess let me ask everybody for their views 19 just to me. Respond to the LISTSERV so that our team 19 on that. I can see both sides of that coin. For 20 that are assigned to each of the defendants get a copy 20 example, it makes sense to me that a waiver argument 21 of your response. Thank you. 21 is something that plaintiffs should be allowed to try 22 PAUL HEINZ: Special Master Cohen, this is 22 and answer. You know, that's strictly because we're 23 Paul Heinz for CDS. We had understood your ruling to 23 talking about attorney-client privilege information 24 be that we identify the reports are being withheld to 24 and the argument as to whether something is attorney-25 plaintiffs, have an opportunity to meet and confer 25 client privileged are there to be made. But some of Page 31 Page 33 1 with them this week, and then if we couldn't work it 1 the information that goes to it is itself privileged. 2 out, submit them to you for in-camera review by this 2 Any thoughts? 3 Friday. Were we mistaken? We have identified --PETE WEINBERGER: Yes, this is Pete. I think SPECIAL MASTER DAVID COHEN: No. No, you're 4 that as much as possible, we should be able to see the 5 correct. I forgot that I wanted to give you all a 5 complete submission because this is -- I mean, 6 chance to take something off of my plate. There are 6 arguments regarding the context by which the document 7 many defendants who already know that -- you know, 7 was initially produced is really important to our 8 that a meet and confer is not going to achieve any 8 being able to argue, you know, why it's not 9 progress because they are quite certain that they are 9 privileged. And, so, I think that perhaps a summary 10 going to invoke the privilege and there is no 10 to us regarding that and to you is appropriate. And, 11 discussion that would change that. And, so, 11 then, to the extent that it is -- there are specifics 12 appropriately, have simply gone ahead and provided 12 that they don't want to disclose, they can do that in 13 those (inaudible) audits for in-camera review and so 13 a supplement to you. 14 on. But, certainly, if there is a chance that the 14 SPECIAL MASTER DAVID COHEN: Right. It could 15 be done that way, I suppose, or it could be done by 15 parties can come to some sort of agreement so that I 16 don't have to undertake all of that, then that's fine. 16 sending me a letter and then redacting parts that are 17 PAUL HEINZ: And, then, the deadline would be 17 privileged, which ever is easier for defendants. Any 18 this Friday, if we can't reach an agreement, to submit 18 thoughts from (inaudible)? DALE RICE: Special Master Cohen, this is 19 any documents to you for in-camera review? 19 20 SPECIAL MASTER DAVID COHEN: Correct. 20 Dale Rice from McKesson (ph) and I think we may be the 21 UNKNOWN FEMALE: Along with a letter? 21 only ones that are on our second submission. What we 22 SPECIAL MASTER DAVID COHEN: Correct. 22 did is provided you with some limited information 23 UNKNOWN FEMALE: Thank you. 23 about the documents when we made the in-camera 24 SPECIAL MASTER DAVID COHEN: Thank you. And 24 submission. And, then, when we did our letter 25 let me add that I have instructed Josh Gay to add into 25 yesterday, we framed it so that we didn't have to take